

MT LEGISLATIVE HISTORY

Chapter 592 19 77

Bill (H) 800 S \_\_\_\_\_

Original bill & hist. ☒ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Feb 22 ☒ C

Hearing Date(s) Mar 26 ☒ C

Feb 24 ☒ C

Apr 01 ☒ C

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Date Out \_\_\_\_\_ C

\_\_\_\_\_ C

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Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee \_\_\_\_\_

Report \_\_\_\_\_

JUDICIARY COMMITTEE

45th Legislature

| Bill No. | Subject Matter                                                                                                             | Date In | Sponsor                  | Hearing Date      | Committee Action   | Date Out |
|----------|----------------------------------------------------------------------------------------------------------------------------|---------|--------------------------|-------------------|--------------------|----------|
| SB 326   | allow validation of marriage entered into by written declaration upon same terms as invalidation of marriages              | 2-1     | Turnage                  | 3-9<br>Wednesday  | concurred          | 3-16     |
| HB 538   | regulate exercise of power of eminent domain by certain persons to require approval of the dept of NR to condemn reservoir | 2-16    | Nathe                    | 2-21              | do pass<br>amended | 2-23     |
| HB 462   | implementing article, etc. constitution to provide code of ethics prohibiting conflict between public duty and private,    | 2-16    | Meloy                    | 2-21<br>Monday    | do pass<br>amended | 2-25     |
| HB 797   | ensure effective utilization of potential of state lands in trust for funds for education, etc.                            | 2-17    | Mular                    | 2-22<br>Tuesday   | do pass            | 2-22     |
| HB 800   | establish small claims for justice courts                                                                                  | 2-17    | Holmes                   | 2-22<br>Tuesday   | do pass<br>amended | 2-24     |
| HJR 81   | requesting the committee on priorities to assign to committee a study of methods, existing water rights                    | 2-8     | Committee<br>Bill<br>Day | 2-23<br>Wednesday | Water<br>do pass   | 2-23     |

1 House BILL NO. 800  
 2 INTRODUCED BY Holmes, J. J. Galt, J. J. Galt, J. J. Galt  
 3 Ramirez, J. J. Galt, J. J. Galt  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH SMALL  
 5 CLAIMS PROCEDURES FOR JUSTICES' COURTS IN THE STATE OF  
 6 MONTANA; REPEALING SECTIONS 93-122 THROUGH 93-344, R.C.M.  
 7 1947."  
 8  
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 10 Section 1. Purpose. It is the purpose of this act to  
 11 provide a speedy remedy for small claims and to protect a  
 12 forum in which such claims may be heard and disposed of  
 13 without the necessity of a formal trial.  
 14 Section 2. Creation of small claims court. There is  
 15 established within the jurisdiction of each justice's court  
 16 in this state a small claims division to be known as the  
 17 "small claims court".  
 18 Section 3. Jurisdiction. (1) The small claims court  
 19 has jurisdiction over all actions for the recovery of money  
 20 or specific personal property when the amount claimed does  
 21 not exceed \$500, exclusive of costs, and the defendant can  
 22 be served within the county where the action is commenced.  
 23 (2) A district court judge may require any action  
 24 filed in district court to be removed to the small claims  
 25 court if the amount in controversy does not exceed \$500. The

1 small claims court shall hear any action so removed from the  
 2 district court.  
 3 Section 4. Venue. Proper venue for actions commenced  
 4 in the small claims court is the same as that provided by  
 5 law for civil actions commenced in justice's court.  
 6 Section 5. Commencement of actions -- pleadings --  
 7 informal proceedings. A small claims action is commenced  
 8 whenever any person appears before a justice of the peace  
 9 and executes a sworn small claims complaint in substantially  
 10 the same form as set forth in [section 6]. No form of  
 11 pleading other than the complaint and the order of the  
 12 court/notice to defendant is allowed, and the hearing and  
 13 disposition of small claims actions shall be informal.  
 14 Section 6. Form of sworn complaint and order of the  
 15 court/notice to defendant. The sworn complaint and order of  
 16 the court shall be made on a blank substantially in the  
 17 following form:  
 18 IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S  
 19 COURT OF ..... COUNTY, MONTANA  
 20 BEFORE ..... JUSTICE OF THE PEACE  
 21 .....  
 22 .....  
 23 Plaintiff,  
 24 vs. Complaint  
 25 ..... Case No. ....

1 .....  
 2 Defendant(s)  
 3 .....  
 4  
 5 Comes now the plaintiff, being first duly sworn, upon  
 6 oath, and complains and alleges that defendant is indebted  
 7 to plaintiff in the sum of \$....., for.....  
 8 .....  
 9 .....  
 10 which sum is now due, owing and unpaid despite demands for  
 11 the payment thereof, together with plaintiff's costs herein  
 12 expended.  
 13 Dated this ..... day of ....., 19.....  
 14 .....  
 15 Plaintiff  
 16 .....  
 17 Plaintiff's address  
 18 Subscribed and sworn to before me this ..... day of  
 19 ....., 19.....  
 20 .....  
 21 Justice of the peace  
 22 By:.....  
 23 Clerk, small claims division  
 24 ORDER OF COURT/  
 25 NOTICE TO DEFENDANT  
 26 THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(s):

1 You are hereby directed to appear and answer the within  
 2 and foregoing complaint at:  
 3 .....  
 4 .....  
 5 on..... at ....  
 6 Reset for ..... at ....  
 7 Reset for ..... at ....  
 8 Reset for ..... at ....  
 9 and to have with you, then and there, all books, papers, and  
 10 witnesses needed by you to establish your defense to the  
 11 claim; and you are further notified that in case you do not  
 12 appear, judgment will be taken against you by default, for  
 13 the relief demanded in the complaint, and for costs of this  
 14 action including costs of service of the complaint and order  
 15 of the court/notice to defendant.  
 16 To the Sheriff, Constable, or Server of process of said  
 17 county, greetings:  
 18 Make legal service and due return thereof on the  
 19 defendant at .....  
 20 Dated this .... day of ....., 19.....  
 21 .....  
 22 Justice of the peace  
 23 By:.....  
 24 Clerk of small claims division  
 25 Section 7. Service on defendant. The original of the

1 order and notice shall be shown to the defendant and a copy  
2 of it along with a copy of the sworn complaint shall be  
3 served upon the defendant by the sheriff, constable, or  
4 other process server in the same manner provided by law for  
5 service of process in civil actions in justice's court. The  
6 provisions of law relating to sheriff's fees are applicable  
7 to this section.

8 Section 8. Hearing date — how set. The date for the  
9 appearance of the defendant to be set forth in the order  
10 shall be determined by the justice of the peace or by his  
11 clerk in accordance with rules adopted by the justice of the  
12 peace and may not be more than 20 or less than 10 days from  
13 the date of the order. Service of the order and a copy of  
14 the sworn complaint shall be made upon the defendant not  
15 less than 5 days prior to the date set for his appearance by  
16 the order. If the order is not timely served, the plaintiff  
17 may have a new appearance date set by the justice of the  
18 peace or his clerk and a new order issued and delivered to  
19 the sheriff, constable, or other process server. If  
20 necessary, repeated orders may be issued at any time within  
21 1 year after the commencement of the action.

22 Section 9. Return of service. The sheriff, constable,  
23 or other process server shall, after affecting service,  
24 return the original order to the justice of the peace or his  
25 clerk.

1 Section 10. Parties — representation. (1) Parties in  
2 the small claims court may be individuals, partnerships,  
3 corporations, unions, associations, or any other kind of  
4 organization or entity.

5 (2) A party may not be represented by an attorney  
6 unless all parties are represented by an attorney in a small  
7 claims court except as provided in subsection (3).

8 (3) An individual may represent himself in a small  
9 claims court. A partnership may be represented by a partner  
10 or one of its employees. A union may be represented by a  
11 union member or union employee. A corporation may be  
12 represented by one of its employees. An association may be  
13 represented by one of its members or by an employee of the  
14 association. Any other kind of organization or entity may be  
15 represented by one of its members or employees.

16 (4) Only a party, natural or otherwise, who has been a  
17 party to the transaction with the defendant for which the  
18 claim is brought may file and prosecute a claim in the small  
19 claims court.

20 (5) No party may file an assigned claim in the small  
21 claims court.

22 (6) Notwithstanding any other provision of this  
23 section, a personal representative of a decedent's estate, a  
24 guardian, or a conservator may be a party in the small  
25 claims court.

Section 11. Witnesses -- evidence -- subpoena power.

The plaintiff and the defendant may offer evidence in their behalf by witnesses appearing at such hearing in the same manner as in other cases arising in justice's court or by written evidence and the judge may direct the production of evidence as he considers appropriate. The small claims court has the subpoena power granted to justices' courts in all civil cases.

Section 12. Record. All civil actions tried in a small claims court shall be recorded either electronically or stenographically.

Section 13. Appeals -- no trial de novo. (1) If either party is dissatisfied with the judgment of the small claims court, he may appeal to the district court of the county where the judgment was rendered. An appeal shall be commenced by giving written notice to the small claims court and serving a copy of the notice of appeal on the adverse party within 10 days after entry of judgment. Within 30 days of the notice, the entire record of the small claims court proceedings shall be transmitted to the district court or the appeal shall be dismissed. It is the duty of the appealing party to perfect the appeal.

(2) There shall not be a trial de novo in the district court. The appeal shall be limited to questions of law.

Section 14. Record on appeal. When notice of appeal is

filed, the justice shall forward the electronic recording or transcript of the stenographic record of the proceedings to the district court, together with the original papers filed certified by him to be accurate and complete. When the record is transferred to the clerk of the district court, the justice shall notify the parties in writing.

Section 15. Use of transcripts or tapes by district court. The district court may hear the recording of the proceedings of the justice court, but in its discretion, it may have parts or all of the recordings transcribed at the cost of the district court. If the proceedings are stenographically taken, the notes will be transcribed in full or in designated parts as stipulated by the parties. The cost of such transcription shall be computed as prescribed by law.

Section 16. Location of court -- office hours. The small claims division of justice court shall be located at the same place as the justice's court and shall be open during the same hours as the justice's court.

Section 17. Assistance by justice -- record. (1) The justice shall assist any claimant in preparing his complaint or instruct his clerk to provide such assistance.

(2) The justice shall enter in the docket kept by him for small claims cases the following:

(a) the title of each action;

(b) the amount claimed;

(c) the date the order of court/notice to defendant was signed and the date of the trial as stated in the order;

(d) the date the parties appeared or the date on which default was entered;

(e) each adjournment stating on whose application and to what time;

(f) the judgment of the court;

(g) a statement of any money paid to the justice, when, and by whom;

(h) the date of the issuance of any abstract of the judgment; and

(i) the date of the receipt of the notice of appeal, if any is given, and of the appeal bond, if any is filed.

Section 18. Entry of judgment. Upon the conclusion of the case tried to the court, the justice shall make his findings and enter judgment.

Section 19. Execution. Proceedings to enforce or collect a judgment are governed by the laws relating to execution upon justice's court judgments.

Section 20. Fees — costs. (1) The clerk of the justice's court shall collect a fee of \$3.50:

(a) from the plaintiff upon the filing of the sworn complaint; and

(b) from the defendant upon his appearance and

contesting of the complaint.

(2) The laws relating to paupers' affidavits apply to actions before the small claims court.

(3) The prevailing party in an action before the small claims court is entitled to his costs.

Section 21. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 22. Repealer. Sections 93-322 through 93-344, R.C.M. 1947, are repealed.

-End-

JUDICIARY COMMITTEE  
February 22, 1977

The regular meeting of the House Judiciary Committee was called to order by Chairman Scully at 7:30 a.m. in room 436 of the Capitol Building, Helena, Montana on Tuesday, February 22. All members were present.

Scheduled for hearing were House Bills 787, 797, and 800.

HOUSE BILL #797:

REPRESENTATIVE MULAR, DISTRICT #85:

This bill reserves limited amounts of water necessary for the continuing development and appropriating funds for the purposes of the department of state lands. It would be 4-acre feet per year per acre within the tract.

TED DONEY, DEPARTMENT OF NATURAL RESOURCES:

We have reviewed this bill and I think it is an interesting concept. If it is appropriated to existing law, it will work.

REPRESENTATIVE MULAR:

We do think it is a good concept. He cited two case laws, Nevada and Washington, with similar laws. The state can reserve water. All this bill would do is hold the water. The state only has an appropriated right like a citizen. He mentioned the research development account and then discussed the sub-surface and surface water. Any water with a right of its own would not be affected by this law.

After a short question and answer period the hearing closed on 797.

THE HEARING OPENED ON HOUSE BILL #800:

REPRESENTATIVE HOLMES, DISTRICT #67:

Last session we passed legislation to establish small claims court, but it has not been used at all. We would like to allow small claims to be heard in justice court. This is an alternative approach for small claims.

JUDGE WYN DOWLING, JUSTICE OF THE PEACE, BILLINGS:

The supreme court on lower courts came up with this bill. It is a copy of the Nevada court act. He explained how the court would work, how there would be a pamphlet to explain the process, summons, a copy would be served on the defendant, and the trial handled informally. He mentioned the 500 dollar limit and elaborated on it some. He went on to explain it further and stated that this would save the district court a lot of time.

PROPONENT, TOM WINSOR, MONTANA CHAMBER OF COMMERCE:

We are in favor of the small claims court system but because the small claims court has not been implemented we are inclined to favor this. I would recommend that the \$500 be reviewed by the committee.



RUSS LIVERGOOD, MONTANA RETAIL ASSOCIATION:

There is only one area of the bill I would address. We would oppose this bill unless it is amended. He gave prices of things in stores and made the comment that most articles are not under \$500. When you lower it you lower the effectiveness of a small claims court. We would lose the effectiveness.

REPRESENTATIVE HOLMES:

I hope the committee will keep in mind that this is for the people. We want to make a small claims court available for the use of the people.

Representative Keyser asked if we are going to have to double the number of JP's.

JUDGE:

No, they do that now.

KEYSER:

How long do you have to keep the records.

JUDGE:

The docket is a court of record and would be kept forever. The other records would be kept for five years.

CHAIRMAN SCULLY:

Explained to the committee the jurisdictional limits.

A general discussion followed about the use of the justice court for retail merchants.

MR. SCULLY:

Asked the judge if he hadn't opposed the bill he, himself, had introduced in 1975.

The judge answered that he had not opposed it, only questioned it.

Mr. Scully commented on the jurisdictional limits of the small claims court and explained the procedure of the small claims court to the committee.

The hearing closed on House Bill #800.

THE HEARING OPENED ON HOUSE BILL #787:

REPRESENTATIVE DRISCOLL, DISTRICT #91:

The bill would authorize the secretary of state to order the involuntary dissolution of corporations without court decree.

MIKE McGRATH, ATTORNEY GENERALS OFFICE:

This will was introduced at our request. We discovered that there was a law on the books to dissolve corporations that had not met

JUDICIARY COMMITTEE

EXECUTIVE SESSION  
February 24, 1977

The House Judiciary Committee was called to order by Chairman Scully at 7:00 a.m. on Thursday February 24, 1977 in room 436 of the Capitol Building, Helena, Montana. All members were present with the exception of Representatives Kennerly and Teague.

REPRESENTATIVE SEIFERT moved the committee adopt the sub-committee report on water given by Representative Day. The motion carried with Representative Lory voting "no".

HOUSE BILL #486:

REPRESENTATIVE HAND moved "do not pass".

The motion carried with Representatives Holmes, Scully, Eudaily and Courtney voting "no".

HOUSE BILL #574:

REPRESENTATIVE DUSSAULT moved to amend lines 34 on page 2 and lines 9 and 10 on page 2.

REPRESENTATIVE LORY moved a substitute motion "do not pass". The motion carried with Representatives Ramirez, Eudaily, McLane and Scully voting "no".

HOUSE BILL #639:

REPRESENTATIVE DUSSAULT moved "do not pass".

The motion carried with the vote unanimous.

HOUSE BILL #782:

REPRESENTATIVE RAMIREZ moved the proposed amendments. The motion carried with the vote unanimous.

REPRESENTATIVE RAMIREZ moved "do pass as amended".

The motion carried with the following representatives voting "no". Representatives Seifert, Scully, Courtney, Baeth, Hand, and Eudaily.

HOUSE BILL #795:

REPRESENTATIVE BAETH moved "do pass".

The motion carried with the vote unanimous.

HOUSE BILL #800:

REPRESENTATIVE RAMIREZ moved to accept the proposed amendments. The motion carried. REPRESENTATIVE HOLMES moved to strike the repealer section. The motion to strike carried.

REPRESENTATIVE KEYSER moved "do not pass as amended"

REPRESENTATIVE HOLMES moved a substitute motion "do pass as amended".

REPRESENTATIVE RAMIREZ moved to amend page 6, line 20. The motion to amend carried with Representative Eudaily voting "no".

The question was called and the motion "do pass as amended" carried with the following representatives voting "no". Representatives Courtney, Keyser, Seifert, Eudaily, Scully and Conroy.

## LEGISLATIVE SESSION

1977

COMMITTEE ON JUDICIARY

[illegible]

(Use Separate Sheet for Senate, House Bills, and Resolutions)

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
March 26, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, on the above date at 9:35 a.m. in Room 415 of the State Capitol Building.

ROLL CALL:

All members of the committee were present for this meeting.

WITNESSES PRESENT TO TESTIFY:

Rep. Harrington - Butte  
Jim Roberts - Joint Council of Teamsters, Local #23  
Ernest Post - Montana State AFL-CIO  
Greg Morgan - Montana Bar Assn.  
Harry Maschera - Insurance Commissioner's office  
Rep. Ramirez - Billings  
Al Mayes - regional manager of Lawyers Title Insurance Corp., Denver  
Phil Strobe - First Montana Title Co.  
Gorham Swanberg - Montana Railroad Assn.  
Neil Ugrin - Commonwealth Land Title Insurance Co., Great Falls  
E. Bob Brown - Guarantee Title Co., Great Falls  
Joan Knipfer - American Land Title Co., Bozeman  
Joe Driscoll - Insurance Commissioner  
Mike McGrath - Office of the Attorney General  
Rep. Holmes - Billings  
Russ Livergood - Montana Retail Clerks  
Tom Dowling - Helena attorney

CONSIDERATION OF HOUSE BILL 761:

Rep. Harrington of Butte, sponsor of the bill, said that it provides for prepaid legal services because it is a plan which would allow people to pay monthly premiums for insurance for legal services when needed.

Don Robinson, an attorney in Butte, explained the bill to the committee for Rep. Harrington. He said that it will permit non-profit legal service corporations and regulate them. He read a prepared statement to the committee on this bill. (See Exhibit 1)

Jim Roberts of the Joint Council of Teamsters, Local #23, said that their local was the first in Montana to make this available to their members. Their main concern is that the Taft-Hartley Trust will be protected by this bill. He said they support HB 761.

Ernest Post of the Montana State AFL-CIO gave the committee some proposed amendments to HB 761. (See Exhibits 2, 3, 4, 5, 6, 7 and 7A)

Greg Morgan of the Montana Bar Assn. responded to the proposed

and the amendments of Swanberg.

Joan Knipfer of the American Land Title Co. in Bozeman said that she writes title insurance and opposes Strobe's amendment because it defeats the purpose of this bill.

Rep. Ramirez, in closing, said that when this bill was originally heard in the House there was nobody at the hearing. However, after the amendment was proposed, there was a lot of interest. He told the committee that he does not like the amendment as it is for a specific interest, and that he would rather see the bill killed than have the Strobe amendment put in the bill. He will fight this in the House if it is accepted here. He also said that he resents the attack on the ethics of the Montana Bar Assn. and attorneys which was made by Mr. Strobe in his concluding remarks as that was going beyond the scope of a proponent of a bill.

After some questioning by committee members, the hearing on HB 713 was closed.

#### CONSIDERATION OF HOUSE BILL 787:

Joe Driscoll, Insurance Commissioner, said that this bill was introduced at the request of the Attorney General because the last session required the Attorney General to dissolve corporations which have not fulfilled their obligations. This bill would assist in the dissolution of corporations by having them done through the office of the Secretary of State.

A proponent of the bill, Mike McGrath of the office of the Attorney General, said that when they got into office they found that one of the things the Attorney General was required to do was bring an action in district court to dissolve corporations which have not fulfilled their obligations. He explained that this bill would give that duty to the Secretary of State and recommended that page 6, line 7, be amended regarding the reinstatement of a corporation which has been dissolved. He asked that the committee delete the word "original" because that could change the amount of the fee.

Some of the staff of the Secretary of State's office was present to answer questions.

#### CONSIDERATION OF HOUSE BILL 800:

Rep. Holmes of Billings, sponsor of the bill, was not here. Small claim procedures in justice courts are dealt with in this bill. Winn Dowlin, an attorney and justice of the peace in Yellowstone County, explained the bill to the committee for Rep. Holmes who had been detained in another committee hearing. He was one of the drafters of this bill which really originated because of circumstances in Yellowstone County. When Rep. Holmes arrived, she apologized for being late and gave some forms to the committee for their information (See Exhibit 12) and asked if they wanted to question the "de novo" inference on page 7. She suggested an amendment to page 8, line 20, to change the "." to a "," and add "an evening session is available at least once a month."

Senator Olson proposed an amendment to raise the jurisdictional levy to \$1,500 from \$500. (See Exhib #13)

Russ Livergood, representing the Montana Retail Clerks, read a prepared statement (See Exhibit 14) in opposition to HB 800 and asked that HB 800 be not concurred in by this committee.

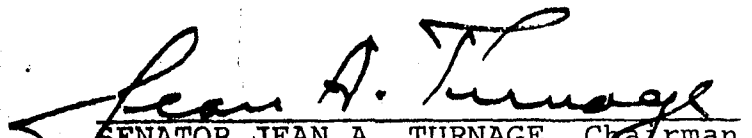
Greg Morgan of the Montana Bar Assn., said that his concern is about the judge who sits at a trial whether he be an attorney or that the trial de novo be subject to appeal.

Tom Dowling, a Helena attorney, responded to the above statement by saying that it starts out as a small claims court for individuals. Retail should not be taking over the court. Trial de novo is a waste of one court's time. Either the judge at the trial is wasting his time or the district court is wasting its time. This bill would not tie up the district court with a trial. He submitted a letter which had been received from Wyoming on this subject. (See Exhibit #15)

At this time Rep. Holmes said that the reason for the \$500 is because they did not want to make it too high for the little people. If it is too high, the courts would be flooded with collections. She asked that the committee do not put it as high as \$1,500.

After questions by committee members, the hearing on HB 800 was closed.

There being no further business before the committee at this time, the committee adjourned at 11:35 a.m..

  
SENATOR JEAN A. TURNAGE, Chairman



(Ex 13) 2. 6. 1900

STANDING COMMITTEE REPORT

Mr. President,

We, your Committee on Judiciary, having had under consideration House Bill No. 800 entitled "AN ACT TO ESTABLISH SMALL CLAIMS PROCEDURES FOR JUSTICES" COURTS IN THE STATE OF MONTANA," respectfully report as follows: That House Bill No. 800, third reading copy, be amended as follows:

1. Amend page 1, Section 3, line 22

Strike: the figures "500"

Insert: the figures "1,500"





16214

# MONTANA RETAIL ASSOCIATION

GRANITE BLOCK • P. O. BOX 440 • HELENA, MONTANA 59601  
SERVING THE TOTAL INTERESTS OF MONTANA RETAILERS

AREA CODE 406  
442-3388

HOUSE BILL NO. 800

"AN ACT TO ESTABLISH SMALL CLAIMS PROCEDURES  
FOR JUSTICES' COURTS IN THE STATE OF MONTANA."

- - - - -  
Testimony Before the Senate Judiciary Committee  
- - - - -

Mr. Chairman, Members of this Committee:

My name is Russ Livergood, lobbyist for the Montana Retail Association, appearing in opposition to House Bill No. 800 as it is presently written.

House Bill 800 changes the existing statutes that govern the small claims court. The present statute creates by resolution of County Commissioners, or by a county initiative, the small claims court. We feel this method is much better than that proposed by House Bill 800 which mandates the court be set up in the offices of the Justices of Peace.

The present statute provides that the officer presiding over the small claims court be an attorney, licensed to practice within the state of Montana. House Bill 800 has no such provision and would permit persons perhaps untrained in legal matters to sit in judgement over small claims. We feel that by requiring the presiding officer to be an attorney equity might better be served

The present statute provides that claims not to exceed \$1500 can be heard in small claims court. House Bill 800 limits claims to \$500, a figure much too low when one considers that many washer-dryer combinations, most refrigerators, most furniture groupings, many sophisticated stereo sets and most advanced television sets exceed the \$500 limit.

The present statute specifically prohibits the filing of an assigned claim, whereas House Bill 800 provides for three such assigned claims per calendar year. This practice could inundate the courts with collection service agents and destroy the true purpose of the small claims court.

We respectfully suggest that the present statute adequately serves the purposes of a small claims court and that House Bill 800 is unneeded. Mr. Chairman, members of this committee, we respectfully submit that House Bill 800 deserves a "do not pass" recommendation.

Mr. Chairman, members of this committee, thank you for the opportunity to appear before you and express the views of the Montana Retail Association.

Note: 2/11/20

(Please leave prepared statement with Secretary)



BILL

VISITORS' REGISTER

DATE

| NAME                 | REPRESENTING                                         | BILL # | (check one)  |                   |
|----------------------|------------------------------------------------------|--------|--------------|-------------------|
|                      |                                                      |        | SUPPORT      | OPPOSE            |
| BRAD STROTTON        | American Land Title Co.<br>Montana Land Title Assoc. | HB 713 | Support Bill | Oppose Amendment  |
| Jim Roberts          | J.B. TEAMISTERS.                                     | HB 761 |              |                   |
| Don Robinson         | MONTANA LEGAL Protection Plan, Inc.                  | HB 761 |              |                   |
| Paul McCann          |                                                      | HB 713 |              |                   |
| Bob Brown            | FIRST MONTANA TITLE Co. of Bozeman                   | HB 713 | SUPPORT BILL | WITH AMENDMENTS   |
| John Woodgerd        | Sec. of State                                        | HB 787 |              |                   |
| Paul McCann          | Montana Title Assn                                   | HB 713 |              |                   |
| A. H. Conley         | First Mont Title                                     | HB 713 | Support      | with Amend.       |
| Wm. F. Gowen         | HELENA ABSTRACT & Title Co.                          | HB 713 | Support with | AMEND             |
| Jim Sewell           | MONTANA LAND Title Assoc.                            | HB 713 |              |                   |
| Wm. E. Dornin, Jr.   |                                                      | HB 800 |              |                   |
| Ed Brown             | Successor Title Co.                                  | HB 713 | Support      | without Amendment |
| W. E. Coplin         | Commercial Title & Title Co.                         | HB 713 |              | with Amend.       |
| Kessie E. Hunsberger | AMERICAN ABSTRACT AND TITLE Co.                      | HB 713 | Support      | Oppose Amendment  |
| Chris R. Leary       | American Land Title Co. Missoula                     | HB 713 |              | Amend.            |
| P. O. Leary          | Montana Abstract & Title Assn.                       | HB 713 |              | Amend             |
| G. H. Mayes, Jr.     | LAWYERS TITLE INSUR. CORP.                           | HB 713 | SUPPORT BILL | OPPOSE AMENDMENT  |
| James S. Knipper     | American Land Title Co. - Bozeman                    | HB 713 | Support Bill | Oppose Amendment  |
| Robert S. Knipper    | " " " "                                              | HB 713 | Support Bill | Oppose Amendment  |
| Ernest Gost          | 1st Mont Title Co.                                   | HB 761 |              | Amend             |
| R. G. & D. G. Gost   | 1st Mont Title Co.                                   | HB 713 |              |                   |
| John H. Gost         | 1st Mont Title                                       | HB 713 |              |                   |
| John H. Gost         | 1st Mont Title                                       | HB 713 |              |                   |
| Frank H. Gost        | First Montana Title Ins Co.                          | HB 713 |              |                   |

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
April 1, 1977

The meeting of this committee was called to order on the above date by Sen. Turnage, Chairman, at 9:40 a.m. in Room 442 of the State Capitol Building.

ROLL CALL:

All members of the committee were present for this meeting.

EXECUTIVE SESSION

HJR 93 - Sen. Towe moved that HJR 93 BE CONCURRED IN. The motion carried unanimously.

HB 492 - Sen. Towe moved the adoption of the attached amendments except for amendment #6. The motion carried unanimously. Sen. Murray moved the adoption of amendment #6. That motion also carried unanimously. (See Attach. #1) Sen. Roberts then moved that HB 492 as amended BE CONCURRED IN. The motion carried unanimously.

HB 544 - Sen. Roberts moved that HB 544 BE NOT CONCURRED IN. The motion carried on a vote of 7 - 1 with Sen. Warden casting the "No" vote.

HB 590 - Sen. Lensink moved that HB 590 BE NOT CONCURRED IN. The motion carried unanimously.

HB 688 - Sen. Olson moved that HB 688 BE NOT CONCURRED IN. The motion carried unanimously.

HB 654 - Sen. Regan moved that HB 654 be laid on the table and put in a subcommittee consisting of Senators Towe and Olson for study with Rep. Meloy. The motion carried unanimously.

HB 738 - Sen. Warden moved that HB 738 be laid on the table and that Joan and Lon be requested to research it and give the details to the committee. The motion carried unanimously.

HB 787 - Sen. Regan moved to strike "original" on page 6, line 7. The motion carried unanimously. She then moved that HB 787 as amended BE CONCURRED IN. The motion carried unanimously.

HB 800 - Sen. Olson moved to amend page 1, line 22, by striking "\$500" and inserting "\$1,500"; and to amend page 6, line 22, by striking "MORE THAN THREE CLAIMS IN ANY CALENDAR YEAR" and inserting on line 23 "(6) No party may file more than three claims in any calendar year." and then renumber the subsequent subsection. The motion carried unanimously. Sen. Warden then moved that HB 800 as amended BE CONCURRED IN. The motion carried unanimously.

## JUDICIARY COMMITTEE

Date \_\_\_\_\_

4-1-77

[illegible]

HOUSE BILL NO. 800

INTRODUCED BY HOLMES, MELOY, METCALF, DUSSAULT,

RAMIREZ, FAGG, PORTER, GERKE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH SMALL  
CLAIMS PROCEDURES FOR JUSTICES' COURTS IN THE STATE OF  
MONTANA; ~~REPEALING SECTIONS 93-322 THROUGH 93-344, R.C.M.~~  
~~1947.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose. It is the purpose of this act to  
provide a speedy remedy for small claims and to promote a  
forum in which such claims may be heard and disposed of  
without the necessity of a formal trial.

Section 2. Creation of small claims court. There is  
established within the jurisdiction of each justice's court  
in this state a small claims division to be known as the  
"small claims court".

Section 3. Jurisdiction. (1) The small claims court  
has jurisdiction over all actions for the recovery of money  
or specific personal property when the amount claimed does  
not exceed ~~\$500~~ ~~\$1,500~~ ~~\$500~~ \$750, exclusive of costs, and  
the defendant can be served within the county where the  
action is commenced.

(2) A district court judge may require any action

filed in district court to be removed to the small claims  
court if the amount in controversy does not exceed \$500. The  
small claims court shall hear any action so removed from the  
district court.

Section 4. Venue. Proper venue for actions commenced  
in the small claims court is the same as that provided by  
law for civil actions commenced in justice's court.

Section 5. Commencement of actions -- pleadings --  
informal proceedings. A small claims action is commenced  
whenever any person appears before a justice of the peace  
and executes a sworn small claims complaint in substantially  
the same form as set forth in [section 6]. No form of  
pleading other than the complaint and the order of the  
court/notice to defendant is allowed, and the hearing and  
disposition of small claims actions shall be informal.

Section 6. Form of sworn complaint and order of the  
court/notice to defendant. The sworn complaint and order of  
the court shall be made on a blank substantially in the  
following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S

COURT OF ..... COUNTY, MONTANA

BEFORE ..... JUSTICE OF THE PEACE

.....  
.....

Plaintiff,

FINAL PRINTING

ADOPTED BY  
HOUSE OF REPRESENTATIVES  
AND SENATE

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HB 800

1 vs. Complaint  
 2 ..... Case No.....  
 3 .....  
 4 Defendant(s)  
 5 .....  
 6  
 7 Comes now the plaintiff, being first duly sworn, upon  
 8 oath, and complains and alleges that defendant is indebted  
 9 to plaintiff in the sum of \$....., for.....  
 10 .....  
 11 .....  
 12 which sum is now due, owing and unpaid despite demands for  
 13 the payment thereof, together with plaintiff's costs herein  
 14 expended.  
 15 Dated this ..... day of ....., 19.....  
 16 .....  
 17 Plaintiff  
 18 .....  
 19 Plaintiff's address  
 20 Subscribed and sworn to before me this ..... day of  
 21 ....., 19.....  
 22 .....  
 23 Justice of the peace  
 24 By:.....  
 25 Clerk, small claims division  
 26 ORDER OF COURT/

1 NOTICE TO DEFENDANT  
 2 THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(s):  
 3 You are hereby directed to appear and answer the within  
 4 and foregoing complaint at:  
 5 .....  
 6 .....  
 7 on..... at ....  
 8 Reset for ..... at ....  
 9 Reset for ..... at ....  
 10 Reset for ..... at ....  
 11 and to have with you, then and there, all books, papers, and  
 12 witnesses needed by you to establish your defense to the  
 13 claim; and you are further notified that in case you do not  
 14 appear, judgment will be taken against you by default, for  
 15 the relief demanded in the complaint, and for costs of this  
 16 action including costs of service of the complaint and order  
 17 of the court/notice to defendant.  
 18 To the Sheriff, Constable, or Server of process of said  
 19 county, greetings:  
 20 Make legal service and due return thereof on the  
 21 defendant at .....  
 22 Dated this .... day of ....., 19.....  
 23 .....  
 24 Justice of the peace  
 25 By:.....



Clerk of small claims division

Section 7. Service on defendant. The original of the order and notice shall be shown to the defendant and a copy of it along with a copy of the sworn complaint shall be served upon the defendant by the sheriff, constable, or other process server in the same manner provided by law for service of process in civil actions in justice's court. The provisions of law relating to sheriff's fees are applicable to this section.

Section 8. Hearing date -- how set. The date for the appearance of the defendant to be set forth in the order shall be determined by the justice of the peace or by his clerk in accordance with rules adopted by the justice of the peace and may not be more than 20 or less than 10 days from the date of the order. Service of the order and a copy of the sworn complaint shall be made upon the defendant not less than 5 days prior to the date set for his appearance by the order. If the order is not timely served, the plaintiff may have a new appearance date set by the justice of the peace or his clerk and a new order issued and delivered to the sheriff, constable, or other process server. If necessary, repeated orders may be issued at any time within 1 year after the commencement of the action.

Section 9. Return of service. The sheriff, constable, or other process server shall, after affecting service,

return the original order to the justice of the peace or his clerk.

Section 10. Parties -- representation. (1) Parties in the small claims court may be individuals, partnerships, corporations, unions, associations, or any other kind of organization or entity.

(2) A party may not be represented by an attorney unless all parties are represented by an attorney in a small claims court ~~except as provided in subsection (3).~~

(3) An individual may represent himself in a small claims court. A partnership may be represented by a partner or one of its employees. A union may be represented by a union member or union employee. A corporation may be represented by one of its employees. An association may be represented by one of its members or by an employee of the association. Any other kind of organization or entity may be represented by one of its members or employees.

(4) Only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the small claims court.

(5) No party may file an assigned claim in the small claims court ~~MORE THAN THREE CLAIMS IN ANY CALENDAR YEAR.~~

(6) NO PARTY MAY FILE MORE THAN THREE CLAIMS IN ANY CALENDAR YEAR.

1        ~~(6)~~(7) Notwithstanding any other provision of this  
 2        section, a personal representative of a decedent's estate, a  
 3        guardian, or a conservator may be a party in the small  
 4        claims court.

5        Section 11. Witnesses -- evidence -- subpoena power.  
 6        The plaintiff and the defendant may offer evidence in their  
 7        behalf by witnesses appearing at such hearing in the same  
 8        manner as in other cases arising in justice's court or by  
 9        written evidence and the judge may direct the production of  
 10       evidence as he considers appropriate. The small claims court  
 11       has the subpoena power granted to justices' courts in all  
 12       civil cases.

13       Section 12. Record. All civil actions tried in a small  
 14       claims court shall be recorded either electronically or  
 15       stenographically.

16       Section 13. Appeals -- no trial de novo. (1) If either  
 17       party is dissatisfied with the judgment of the small claims  
 18       court, he may appeal to the district court of the county  
 19       where the judgment was rendered. An appeal shall be  
 20       commenced by giving written notice to the small claims court  
 21       and serving a copy of the notice of appeal on the adverse  
 22       party within 10 days after entry of judgment. Within 30  
 23       days of the notice, the entire record of the small claims  
 24       court proceedings shall be transmitted to the district court  
 25       or the appeal shall be dismissed. It is the duty of the

1       appealing party to perfect the appeal.

2       (2). There shall not be a trial de novo in the district  
 3       court. The appeal shall be limited to questions of law.

4       Section 14. Record on appeal. When notice of appeal is  
 5       filed, the justice shall forward the electronic recording or  
 6       transcript of the stenographic record of the proceedings to  
 7       the district court, together with the original papers filed  
 8       certified by him to be accurate and complete. When the  
 9       record is transferred to the clerk of the district court,  
 10       the justice shall notify the parties in writing.

11       Section 15. Use of transcripts or tapes by district  
 12       court. The district court may hear the recording of the  
 13       proceedings of the justice court, but in its discretion, it  
 14       may have parts or all of the recordings transcribed at the  
 15       cost of the district court. If the proceedings are  
 16       stenographically taken, the notes will be transcribed in  
 17       full or in designated parts as stipulated by the parties.  
 18       The cost of such transcription shall be computed as  
 19       prescribed by law.

20       Section 16. Location of court -- office hours. The  
 21       small claims division of justice court shall be located at  
 22       the same place as the justice's court and shall be open  
 23       during the same hours as the justice's court.

24       Section 17. Assistance by justice -- record. (1) The  
 25       justice shall assist any claimant in preparing his complaint

or instruct his clerk to provide such assistance.

(4) The justice shall enter in the docket kept by him for small claims cases the following:

(a) the title of each action;

(b) the amount claimed;

(c) the date the order of court/notice to defendant was signed and the date of the trial as stated in the order;

(d) the date the parties appeared or the date on which default was entered;

(e) each adjournment stating on whose application and to what time;

(f) the judgment of the court;

(g) a statement of any money paid to the justice, when, and by whom;

(h) the date of the issuance of any abstract of the judgment; and

(i) the date of the receipt of the notice of appeal, if any is given, and of the appeal bond, if any is filed.

Section 18. Entry of judgment. Upon the conclusion of the case tried to the court, the justice shall make his findings and enter judgment.

Section 19. Execution. Proceedings to enforce or collect a judgment are governed by the laws relating to execution upon justice's court judgments.

Section 20. Fees -- costs. (1) The clerk of the

justice's court shall collect a fee of \$3.50:

(a) from the plaintiff upon the filing of the sworn complaint; and

(b) from the defendant upon his appearance and contesting of the complaint.

(2) The laws relating to paupers' affidavits apply to actions before the small claims court.

(3) The prevailing party in an action before the small claims court is entitled to his costs.

Section 21. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

~~Section 22 -- Repeater -- Sections 93-322 through 93-344  
Revised 1947 -- are repeated.~~

--end--